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13 POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an
independent entity named “BURBANK POLICE DEPARTMENT”)

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES

16 OMAR RODRIGUEZ; CINDY GUILLEN-
17 GOMEZ; STEVE KARAGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL CHILDS,

18 Plaintiffs,

19 v.

20 BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
21 100, INCLUSIVE,

22 Defendants.

23 BURBANK POLICE DEPARTMENT; CITY
OF BURBANK,

24 Cross-Complainants,

25 v.

26 OMAR RODRIGUEZ, an Individual;

27 Cross-Defendant.

Case No. BC 414602

Location: 37

Judge: The Honorable Joanne O'Donnell

**DEFENDANT CITY OF BURBANK'S BRIEF
REGARDING THE ADMISSIBILITY OF
PLAINTIFF'S STATEMENTS MADE
DURING RECORDED INVESTIGATION
INTERVIEWS**

File Date: May 28, 2009

Trial Date: Feb. 15, 2012 (Plff. Karagiosian)

May 2, 2012 (Plff. Guillen);

Jul. 11, 2012 (Plff. O. Rodriguez)

Discovery Referee: The Hon. Diane Wayne, Ret.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAR 20 2012

John A. Clark, Executive Officer/Clerk
BY *[Signature]* Deputy
Gloria Robinson

1 **A. BACKGROUND**

2 Defendant City of Burbank hereby submits this brief pursuant to the court's request during
3 the March 19, 2012 hearings regarding motions *in limine*.

4 In 2008, the Burbank Police Department ("BPD") conducted an investigation into
5 allegations of racial/ethnic harassment in the Department. The investigation was conducted by an
6 outside attorney-investigator, Sergio Bent, along with a BPD internal affairs officer. Plaintiff
7 Karagiosian was one of the officers who made the allegations that were being investigated, and
8 Karagiosian was interviewed at length about his allegations in August 2008. There were also
9 follow-up interviews with Karagiosian in November 2008. Each of those interviews was
10 recorded.

11 During these interviews, Karagiosian described the comments he had heard which related
12 to Armenian ethnicity, and also stated whether he had been offended by those incidents. Both
13 issues – what comments were made, and whether Karagiosian took offense – are central to his
14 claim that he was subjected to a hostile work environment based on his Armenian ethnicity.

15
16 **B. KARAGIOSIAN'S STATEMENTS IN THE RECORDED INTERVIEW ARE**
17 **ADMISSIBLE AS A PARTY ADMISSION.**

18 Evidence Code Section 1220 provides:

19
20 Evidence of a statement is not made inadmissible by the hearsay rule *when offered*
21 *against the declarant in an action to which he is a party* in either his individual or
22 representative capacity, regardless of whether the statement was made in his
23 individual or representative capacity. [Emphasis added.]

24 Party admissions are admissible to trial to prove the truth of the matter asserted. As the
25 Court stated in *Jazayeri v. Mao*, 174 Cal. App. 4th 310, 324-25 (2009):

26 Admissions of a party ... are received to prove the truth of the assertions; i.e. they
27 constitute affirmative or substantive evidence that the jury or court may believe as
28 against other evidence, including the party's own contrary testimony on the stand.
[Citations omitted; internal quotation marks omitted].

 A party admission is admissible evidence, subject only to the usual standard of relevance.
Estate of Anderson, 60 Cal. App. 4th 436, 441 (1997) ("Evidence Code section 1220 creates an

1 exception to the hearsay rule for an admission by a party. For such a statement to be admissible
2 against a party as an admission, the statement must assert facts which would have a tendency in
3 reason to prove some portion of the proponent's defense, or to rebut some portion of the party
4 declarant's cause of action.").

5 A party admission may be an oral or written statement.

6 ***Express admissions may be oral or written. Written admission are found in many***
7 ***types of informal and formal documents***, and the fact that a writing is made
8 pursuant to statute, e.g., an income tax return, does not preclude its use." (Id., § 92, p.
9 795; see, e.g., *Horton v. Remillard Brick Co.* (1915) 170 Cal. 384, 400 [defendant's
10 financial documents, including profit and loss sheet and assets and liability account];
11 *Streetscenes v. ITC Entertainment Group, Inc.* (2002) 103 Cal.App.4th 233, 244
12 [unaudited balance sheets presented to court and opposing party by counsel];
13 *Shenson v. Shenson* (1954) 124 Cal.App.2d 747, 752 [defendant's income tax
14 returns]; *Sill Properties, Inc. v. CMAG, Inc.* (1963) 219 Cal.App.2d 42, 54-55
15 [minutes of meeting of defendant's board of directors stating value of assets]; *Keith v.*
16 *Electrical Engineering Co.* (1902) 136 Cal. 178, 181 [paper containing a statement
17 of sales made by defendant and the dates of such sales "handed to plaintiff by
18 defendant"]. [Emphasis added.]

19 *Jazayeri*, 174 Cal. App. 4th at 325.

20 A party admission may be made formally or informally and does not need to be made
21 under oath or during court proceedings to be admissible.¹ For example, in *Kincaid v. Kincaid*, 197
22 Cal. App. 4th 75, 82-85 (2011), the Court of Appeal held that a recording of a police telephone
23 conversation between the plaintiff and defendant was admissible as direct evidence against the
24

25 ¹ Karagiosian's interviews were not made under formal penalty of perjury. However, as a
26 sworn police officer participating in an official investigation, Karagiosian was duty bound to be
27 truthful in his interviews.

28 Furthermore, in his deposition, Karagiosian ***affirmed under oath*** the truth of what he had
told Bent:

Q. So by the time you finished the third [interview] --

A. Right.

Q. -- had you told him everything?

A. To what I can remember, yes.

Q. And you'd been totally truthful with him at that point in time, by the time
you told him -- you had the third interview; right?

MR. GRESSEN: Compound.

THE WITNESS: I tried.

Karagiosian Deposition at 331.

1 defendant as an admission of a party opponent. Similarly, in *People v. Hovarter*, 44 Cal. 4th 983,
2 1006 (2008), the defendant's statements made to his victim while he was committing the crimes
3 that it was not the first time he had committed such crimes was admissible as a party admission
4 against the defendant to connect him to another crime. In *Lake v. Reed*, 16 Cal. 4th 448, 458
5 (1997), the court found that a defendant's statement in an *unsworn* police accident report that he
6 had been driving had been properly admitted as a party admission to prove that the defendant had
7 been driving.

8 Here, Karagiosian's statements made during the three interviews with Sergio Bent are
9 admissible as evidence against Karagiosian because they fall squarely within the party
10 admission exception to the hearsay rule. The tapes of these interviews should be admitted in
11 evidence against Karagiosian.

12
13 C. KARAGIOSIAN'S STATEMENTS IN THE RECORDED INTERVIEW ARE
14 ADMISSIBLE BECAUSE THEY GO TO BURBANK'S KNOWLEDGE OF
15 THE ALLEGED HARASSMENT.

16 In a harassment case, the employer's *knowledge* of the harassment is a critical element of
17 the claim. As our Supreme Court stated in *Carrisales v. Department of Corrections*, 21 Cal.4th
18 1132, 1135 (1999):

19 Harassment of an employee or applicant by an employee other than an agent or
20 supervisor shall be unlawful if the entity, or its agents or supervisors, *knows or*
21 *should have known of this conduct* and fails to take immediate and appropriate
corrective action. [Emphasis added.]²

22 Here, the recorded interviews establish exactly what Karagiosian told Burbank about the
23 alleged harassment he had experienced, and therefore go to Burbank's *knowledge* of the alleged

24
25 ² See also *Fisher v. San Pedro Peninsula Hospital*, 214 Cal. App. 3d 590, 610 (1989) ("To
26 recover for hostile environment harassment a plaintiff must establish (1) he belongs to a protected
27 group; (2) he was subjected to unwelcome acts or works based on his protected status; (3) the
workplace was permeated with discriminatory intimidation, ridicule and insult that is so pervasive
or severe it altered the conditions of employment and created an abusive working environment;
and (4) *respondeat superior*.")

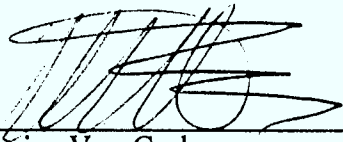
1 harassment. For this purpose the recorded interviews are admissible *without regard to the truth*
2 of Karagiosian's statements.

3 It is a central theme of Karagiosian's case that Burbank supposedly knew of the alleged
4 harassment, failed to take corrective action, and failed to prevent further harassment. It is utterly
5 inconsistent for Karagiosian to make assertions about what Burbank *knew* on this subject, while
6 objecting to evidence of what he *told* Burbank on this subject.

7 For both of the reasons stated above, the recorded interviews are properly admissible
8 evidence

9
10 Dated: March 20, 2012

MITCHELL SILBERBERG & KNUPP LLP
Lawrence A. Michaels
Veronica Von Grabow

11
12
13 By: 
14 Veronica Von Grabow
15 Attorneys for Defendant and Cross-Complainant
16 CITY OF BURBANK, including the
17 POLICE DEPARTMENT OF THE CITY OF
18 BURBANK (erroneously sued as an independent
19 entity named "BURBANK POLICE
20 DEPARTMENT")
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1 **PROOF OF SERVICE**

2 42729-00001

3 *Rodriguez, et al. vs. Burbank Police Department, et al. — LASC Case No. BC414602*

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP,
11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

7 On March 20, 2012, I served a copy of the foregoing document(s) described as:
8 **DEFENDANT CITY OF BURBANK'S BRIEF REGARDING THE ADMISSIBILITY OF**
9 **PLAINTIFF'S STATEMENTS MADE DURING RECORDED INVESTIGATION**
10 **INTERVIEWS** on the interested parties in this action at their last known address as set forth
below by taking the action described below:

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Elfego Rodriguez, and Jamal Childs

16
17 ☒ **BY PERSONAL DELIVERY:** I personally delivered the document(s) listed above to the
person(s) set forth above at the hearing on this matter.

18 I declare under penalty of perjury under the laws of the State of California that the above is
19 true and correct.

20 Executed on March 20, 2012, at Los Angeles, California

21 
22 _____
Veronica von Grabow